IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 884 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIGNESHBHAI JAYANTIBHAI PALAN

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR. H.L. JANI A.G.P for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2001

ORAL JUDGEMENT

1. Heard learned Advocate Mr. Deepak Thakkar on behalf of the petitioner, learned A.G.P. Mr. H.L. Jani on behalf of respondent no. 1,2 and 3. Ms. P.J.

Davawala on behalf of respondent no. 4.

2. In the present petition the petitioner has challenged the detention order dated 10th January, 2001 passed by the District Magistrate, Jamnagar under the provision of Prevention of Black Marketing Act. Learned Advocate Mr. Deepak Thakkar has submitted that in the present petition the petitioner has raised various contentions challenging the detention order but however, according to him one contention is enough to vitiate the order of detention. Learned Advocate Mr Deepak Thakkar has raised contention that on page 21 a representation at Annexure C dated 20th January, 2001, was sent by the Advocate of the present petitioner to the District Magistrate, Jamnagar through Registered A.D. The said representation has been received by District Magistrate, Jamnagar on 22nd January, 2001 and District Magistrate, Jamnagar has forwarded the said representation to the State Government on 29th January, 2001. Therefore, there is a delay in forwarding the representation by the detaining authority to the State Government. The delay is considered to be fatal and the detention order is required to be set aside. Mr. Depak Thakkar has relied upon the two decisions of this Court; URMILABEN NAVNITLAL GANDHI Vs. THE COMMISSIONER OF POLICE reported in 1994 (2) G.L.H. (U.J.) 10 and in Special Civil Application No. 9664 of 1999 dated 16th March, 2000 (Coram: A.L. DAVE, J.). On relying upon these two decisions learned Advocate Mr. Deepak Thakkar has submitted that if delay of two days remains unexplained by the detaining authority, that why the representation has yet not been forwarded immediately to the State Government, then such unexplained delay for not attending the representation of the present petitioner and such inaction and want of attention to the representation can be considered as sufficient to have infringed the right of detenu in making an effective representation. Therefore according to him on this ground the order of detention is required to be set-aside.

3. Learned A.G.P. Mr. H.L. Jani appearing on behalf of the respondent - State has submitted that on behalf of respondent no. 1 affidavit in reply has been filed on 3rd March, 2001 and on behalf of District Magistrate, detaining authority has filed affidavit in reply dated 24th April, 2001. Mr. H.L. Jani, learned A.G.P. has relied upon page 46, para 9 of the reply filed by the detaining authority. According to the reply paragraph 9 at page 46, the detaining authority has submitted that the representation dated 20th January, 2001 made by the petitioner was received by the Office of

District Magistrate, Jamnagar only on 23rd January, 2001 and the same was replied on 29th January, 2001 as there was a public holiday on 26th, 27th and 28th January due to vast disaster namely Earth Quake. It destroyed the chain of entire administration. Thus, the reply in connection with the representation was given very much in time. Therefore, learned A.G.P. Mr. H.L. Jani has submitted that there was no delay in forwarding the representation by the detaining authority to the State Government and immediately on 29th January, 2001 the reply has been given to the detenu.He also submits that there was some delay because of earthquake and public holidays declared by the State of Gujarat on 26th, 27th and 28th January, 2001. Therefore, Mr. H.L. Jani, learned A.G.P. has submitted that detaining authority has rightly attended and immediately replied to the detenu in respect of the representation received on 23rd January, 2001.

4. Learned Advocate Ms. P.J. Davawala has submitted that on behalf of respondent no. 4 one S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution has filed a detailed affidavit on 28th February, 2001. She supported the detention order and submitted that the detaining authority has rightly considered the relevant facts and materials on record, while passing the detention order. It is a legal and valid order passed by the detaining authority. In such circumstances, no interference is required by this Court.

5. Learned Advocate Mr. Deepak Thakkar appearing on behalf of the petitioner has submitted that after considering the reply at paragraph 9 filed by the detaining authority at page 46, a representation has been received on 23rd January, 2001 and a reply has been given to the detenu on 29th January, 2001, excluding the public holidays i.e. 26th, 27th & 28th January, 2001, even though two days remained unexplained i.e. 24th & 25th January, 2001. Therefore, there is two days delay which remained unexplained by the District Magistrate, Jamnagar and no explanation has been given why the representation has not been attended immediately by the concerned detaining authority. Mr.Deepak Thakkar, has relied upon the observation of Special Civil Application No.9664 of 1999 dated 16th March, 2001. In this case even two days unexplained delay in forwarding the representation of the detenu to the State Government by the detaining authority has been considered by this Court. It affects adversely to the legal right of the detenu in making an effective representation. He also submitted that

Division Bench of this Court in reported decision in 1994 (2) G.L.H. (u.j.) page 10 has also considered that if five days delay in considering the representation is not properly explained, then detention order is declared invalid. Mr. Deepak Thakkar has also submitted that Division Bench of this Court has considered the decision of Apex Court in case of Harish Pahwa Vs State of Uttarpradesh reported in AIR 1981 (S.C.)page 1126 wherein similar delay was held to be unexplained which vitiated the continued detention of the detenu. Therefore, when there is unreasonable delay and is not properly explained by the detaining authority then in such circumstances, the detention of the detenu was unreasonable and it vitiated the continued detention of the detenu.

6. I have considered the submission of all the respective advocates appearing on behalf of the respective parties. The facts are not in dispute. Looking to the contention which has been raised by the petitioner at page 5 ground (g) that a representation dated 20.01.2001 to the detaining authority by Registered A.D. on behalf of the petitioner has not been considered at the earliest and if there is any delay. The continued detention becomes bad in law. In reply to ground (g) at page 46 paragraph 9 of the reply filed by the District Magistrate, Jamnagar, though District Magistrate, Jamnagar has explained the total period, there is no explanation in the reply in respect to the delay of 24th and 25th January, 2001. After perusing the paragraph 9 of the reply there is no such explanation why the representation of the present petitioner has not been attended immediately and while it was received on 23rd January, 2001. Therefore, considering this aspect that two days delay has not been explained and also considering the decision of this Court in Special Civil Application 9664 of 1999 dated 16th March, 2000 (Coram: A.L. DAVE,J.) the relevant paragraph 6 is quoted as under :-

> "Having regard to the rival side contentions, the first factor that catches attention in the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority

> has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, tasking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, time consumed is forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation."

7. I have considered the above referred decision and submission as well as the undisputed fact that two days delay in attending the representation by the detaining authority has not been explained in the reply, and considering the view taken by this Court as referred above the representation filed by the detenu has remained unattended for two days. Therefore it is an inaction and want of attention to the representation can be considered as sufficient to have infringed the right of detenu in making an effective representation.

8. Therefore, according to my opinion in present petition also the order of detention is required to be set-aside.

9. In result, and in light of above discussion and observation present petition is allowed. The impugned order of detention dated 10th January, 2001 passed by the District Magistrate, Jamnagar is hereby quashed and set-aside. The detenu Shri Jigneshbhai Jayantibhai Palan who is detained in Central Jail, Baroda as Class II is ordered to be set at liberty forthwith if not required in any other matter. Rule is made absolute with no orders as to costs.

(H.K. RATHOD, J.)

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